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HB 156

# MONTANA ASSOCIATION OF PLANNERS

Legislative Committee

2013 Legislative Session

**Summary comments regarding: HB156, "AN ACT PROVIDING THAT A FIRST-CLASS MUNICIPALITY MAY ALLOW ACCESSORY DWELLING UNITS IN CERTAIN ZONING DISTRICTS ONLY UPON APPROVAL OF A CERTAIN PERCENTAGE OF PROPERTY OWNERS; AND AMENDING SECTION 76-2-302, MCA."**

## House Local Government Committee; January 22, 2013

Title 76, Chapter 2, Part 3 "Municipal Zoning," establishes the purposes for zoning inside municipal areas. The purposes focus on avoiding injury to others, protecting the investments made in real property, and promoting health, safety, morals, or the general welfare of the community.

76-2-302, MCA, which this bill would amend, provides the direction and flexibility needed for the local government of the municipality to set up zoning districts and, within the districts, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

76-2-304, MCA provides for the criteria and guidelines for zoning regulations and specifies nine areas of consideration of local government to evaluate when making or amending zoning regulations. These include several criteria that address the issue of the HB156 amendment:

- It will promote compatible urban growth;
- It will consider the character of the district and its peculiar suitability for particular uses;
- It will conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area.

76-2-302, MCA lays out the procedures and requirements for administering the municipal zoning laws, including notification of property owners and adequate input of the public through public hearings.

MAP opposes this amendment and finds that the law as currently written provides the best flexibility for local municipalities to draft and administer zoning *that meets their unique circumstances* while also providing significant public input and participation when zoning is drafted or amended. MAP opposes the amendment for the following reasons:

- It imposes a special requirement, a 90% approval of property owners within all single family zoning districts. No requirement like this exists for any other zoning district or process anywhere in the MCA. By doing this it supersedes the legal process to



legitimately amend the zoning in a jurisdiction. There already are protest provisions spelled out in 76-2-305 for the public to protest drafting or amending zoning regulations.

- Single-family zoning districts currently can allow a second unit if the property is large enough to accommodate one under the minimum lot size of the district. For example, if the single family zoning district requires a minimum of 9,600 square feet for one home and if the property were 19,200 square feet in size, then two units are allowed. This amendment appears to try and trump even current allowances of single family zoning districts in this way.
- It creates a special requirement not applied to other uses in the same zoning district or other districts. If there needs to be a 90% approval of property owners in the single family zoning for more than one unit, why is there not a 90%-approval of property owners in a district allowing multi-family units or accessory garages? It disrupts the equality of the zoning process for all zoning districts.
- Communities across Montana, especially in eastern Montana communities right now, want the ability to encourage infill development, support affordable housing for all income levels, and ensure that their infrastructure and service delivery is the most efficient possible. This amendment restricts a community's ability to meet these goals when checks and balances are already in place to ensure new zoning and amendments to existing zoning is compatible with existing neighborhoods and development patterns.
- The proposed legislation is discriminatory in that it burdens only first- class municipalities with this 90% ultra-super majority, while other classes of cities are not impacted. Nowhere else in the municipal zoning statutes is there a distinction between municipal zoning and city class.
- The wording of this amendment would also preclude families from providing a living area for an elderly parent within their own house due to the definition of an "Accessory Dwelling Unit". If Grandma wanted to have her own separate bedroom, kitchen and bathroom, she would first need to get approval of 90% of the property owners of property in that ENTIRE zoning district within the municipality.